IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

-

WRIT PETITION NO: 21501 of 2004

Between:

1. P.Kilashnath Reddy, S/o Late Ramachandra Reddy,
   R/o H.No8-2-601/A/5A, Kulsumreddy Layout, Road No.10,
   Banjara Hills, Hyderabad
2. Smt.K.C.Mahananda, W/o Sri K.C.Mahananda,
   R/o Kulsumreddy Layout, Road No.10, Banjara Hills, Hyderabad

... PETITIONERS

AND

1. The Municipal Corporation of Hyderabad, rep.by the Commissioner,
Tankbund Road, Hyderabad
2 M. K. Ghouse, S/o Late Mohd.Kamaruddin,
   R/o 8-2-603/26, Jahranagar, Banjara Hills, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of a Writ of Mandamus directing the 1st respondent i.e., the Municipal Corporation of Hyderabad, represented by the Commissioner, to take immediate steps for restoring the 40 ft. wide road as approved in the approved Kulsumreddy Layout, Road No.10, Banjara Hills, Hyderabad.

Counsel for the Petitioners: MR. V. RAJAGOPAL REDDY
Counsel for the Respondent No.1: SMT. G. JYOTHI KIRAN
Counsel for the Respondent No.2: MR. T. LAXMI NARAYANA

The Court made the following:

ORDER: -

Petitioners, who are residents of Kulsum Reddy approved lay out in the Municipal Corporation of Hyderabad (first respondent) filed this writ petition seeking a direction to the first respondent to restore 40 feet wide road as approved by the lay out in Road No.10, Banjara Hills, Hyderabad, on the ground that it (first respondent) is permitting constructions by the second respondent by encroaching into the 40 feet wide road, without taking any action.

2. In the counter affidavit filed on behalf of first respondent it is alleged that after receiving a report about the encroachments made, those encroachments, were demolished on 11-06-2002 after issuing notice under Sections 452 and 636 of the Hyderabad Municipal Corporation Act, 1955 (the Act) and thereafter Mohd. Mohiuddin, claiming to the owner of the said property, filed W.P.No.10493 of 2002 where a direction was given to it that it should make the demolition only after following due process of law, and thereafter Mohd. Mohiuddin submitted an application, on
24-06-2002, seeking permission for construction of residential building in the property, but the same was refused on 19-07-2002, on the ground that the property is not covered by an approved lay out, as required by Section 388 of the Act, and since the building plans are not in accordance with the ownership documents etc., In the meanwhile on 13-10-2004 it received a complaint about an encroachment on the 40 feet road of Kulsum Reddy lay out and for its demolition. After inspection it was observed that two rooms along with a compound wall were constructed illegally by encroaching on to the 40 feet wide road of Kulsum Reddy lay out, and so they were demolished after issuing notice under Sections 452 and 636 of the Act. But the compound wall was reconstructed on 30-10-2004, at the same place, un-authorizedly, and so it requested the Assistant Commissioner of Police and the Station House Officer, Banjara Hills Police Station to seize the construction tools. But Mohd. Mohiuddin completed the construction of the compound wall by working during nights. Thereafter on 03-11-2004 second respondent filed O.S. No.6443 of 2004 on the file of the Court of IV Junior Civil Judge, City Civil Courts, Hyderabad and obtained *status quo* order in I.A.No.1255 of 2004 against it, in respect of the property in question. It is not known how the second respondent came into possession of the property in respect of which Mohd. Mohiuddin earlier submitted an

application for building permission, which was rejected. In view of the *status quo* order passed in O.S.No.6443 of 2004, it is not able to take any action.

3. The case of the second respondent is that he is a tenant of the premises, in respect of which Mohd. Mohiuddin S/o Mohd. Ismail is the landlord and since the said Mohiuddin is not made a party to the petition it is liable to be dismissed and admitted that he filed O.S.No.6443 of 2004 and obtained an order of *status quo* in I.A.No.1266 of 2004, since the petitioners got impleaded themselves as parties to the said suit and are contesting the suit, this petition is not maintainable.

4. The main contention of the learned counsel for the petitioners is that in view of the encroachment made either by the second respondent or his alleged landlord, petitioners and the other residents of the locality are greatly inconvenienced, and so a direction may be issued to the first respondent to restore 40 feet road.

5. The contention of the learned Standing Counsel for the first respondent is that in view of the order of *status quo* granted against the first respondent by the Civil Court, it is not able to take any action.

6. The contention of the learned Counsel for the second respondent is that since the owner of the property, who according to the first respondent, made the encroachments, is not made a party to the petition, and since a suit in respect of the property is pending.

7. The allegation in paragraph 3 of the counter affidavit filed on behalf of the first respondent shows that encroachment on the 40 feet wide road, made by construction of a compound wall, was demolished on
11-06-2002 and that subsequent thereto Mohd. Mohiuddin (the alleged landlord of the second respondent) claiming to be the owner of the property filed W.P.No.10493 of 2002 and gave an application seeking permission to construct a house.

8. I have sent for the file in W.P.No.10493 of 2002 and gone through the same. That petition is filed by Mohd. Mohiuddin, the alleged landlord of the second respondent, alleging that he is the absolute owner, and is in possession of the building bearing No.8-2-603/26 admeasuring
384 square yards in Plot No.8 of erstwhile Jubilee Hills Municipality, which is presently in Ward No.8 of Zaheera Nagar, Road No.10, Banjara Hills, Saikpet Mandal, Hyderabad District, surrounded by a compound wall and sought for a declaration that the action of the respondents therein i.e., the District Collector, Mandal Revenue Officer, Commissioner, Municipal Corporation of Hyderabad, and Assistant City Planner, Circle V, Municipal Corporation, Hyderabad, in restraining him in enjoying the aforesaid property, is arbitrary and malafide and that the action of the respondents
1 and 2 therein i.e., the District Collector and Mandal Revenue Officer, directing the third respondent i.e., Commissioner, Municipal Corporation of Hyderabad not to entertain the building construction application, without a no objection certificate from them, in respect of the building proposed to be constructed by him is unlawful etc., It is thus seen that the landlord of the second respondent is claiming himself be in possession and occupation of the building, in which second respondent is claiming to be in possession. How, the second respondent, claiming to be a tenant, filed O.S.No.6443 of 2004 even without impleading the landlord, and claiming an injunction has to be decided by the trial Court only. Second respondent who filed O.S.No.6443 of 2004 without impleading his alleged landlord, taking a plea in his counter affidavit in this petition, that this petition without impleading his alleged landlord is not maintainable is akin to the pot calling the kettle black.

9. Since it is stated that petitioners got themselves impleaded in the suit filed by the second respondent, when the matter is pending before the Civil Court, it would not be proper for this Court to pass any orders. Hence, I dispose of this petition with a direction to the IV Junior Civil Judge, City Civil Courts, Hyderabad, to dispose of O.S.No.6443 of 2004 filed by 2nd respondent as expeditiously as possible, at any rate before the end of June, 2005. Registrar (Judicial) and Registrar (Vigilance) shall report about the compliance with the above direction by the learned trial judge in the first week of July.

The writ petition is disposed of accordingly. No costs.

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C.Y. SOMAYAJULU, J

Dt.15-04-2005

Glv

ASSISTANT REGISTRAR

Copy to:

1. The Commissioner, Municipal Corporation of Hyderabad,
Tankbund Road, Hyderabad

2. One copy to the Hon'ble Registrar (Judicial), High Court of A.P.,
Hyderabad.

3. One copy to the Hon'ble Registrar (Vigilance), High Court of A.P.,
Hyderabad.

4. Two CD copies

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